

REMARKS

An Office Action was mailed in the above-captioned application on February 24, 2006. In such Office Action claims 27-36 were pending. Claims 27-36 were rejected. This Amendment and Remarks document is submitted in response to said Office Action.

The Rejection under 35 U.S.C. § 112, second paragraph

The Examiner has rejected Claims 27-35 under 35 U.S.C. § 112, second paragraph. Specifically, the rejection states that the recitation “wherein at least about 21.9% of the total fatty acid of said *Mortierella* sect. *schumuckeri* is arachidonic acid” is vague as the specification allegedly does not teach that the microorganism per se contains 21.9% arachidonic acid. Applicant directs the Examiner’s attention to Example 3 on p. 31 of the specification. The value 21.9% arachidonic acid is identified in Table 3, line 6, under column “ARA%TFA.” Example 3 states that “the relative amounts of total fatty acids and arachidonic acid were measured according to the method described in Example 1.” Example 1 at p. 27, l. 15-p. 28, l. 4 describes the method for determining fatty acid content of cells which includes contacting dry biomass with 4% methanolic H₂SO₄ to hydrolyze, methylate and release any fatty acids in the biomass. Thus, the procedure by which the data in Table 3 were generated directly measured the per cent of total fatty acid occurring as arachidonic acid in the biomass. Applicant submits that Claim 27 as it currently reads is definite and accurately reflects the support in the application for the claimed value. Reconsideration is respectfully requested.

The Double Patenting Rejection

The Examiner has rejected Claims 27-35 as being unpatentable over Claims 1-10 of U.S. Patent No. 6,245,365. An obviousness-type double patenting rejection is appropriate when a claim merely defines an obvious variation of an invention claimed in a patent. M.P.E.P. § 804(II)(B)(1). A double-patenting rejection must rely on a comparison with the claims in an issued or to be issued patent. M.P.E.P. § 804(III). A terminal disclaimer is enclosed. Reconsideration is respectfully requested.

Closing Remarks

Applicant believes that the pending claims are in condition for allowance. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-1970), if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-1970.

Respectfully submitted,

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